



# Department of Planning and Zoning



## THE TOP 15 QUESTIONS ON THE HEARING EXAMINER PROCESS

### 1. **What is the role and authority of the Hearing Examiner?**

The County Council appoints the Hearing Examiner, who must be an attorney with knowledge of administrative and zoning law as stated in the County Charter, Section 502. The Hearing Examiner can be removed by 2/3 vote of the County Council. In addition, the Board of Appeals can recommend removal of the Hearing Examiner based on performance. The Hearing Examiner will conduct hearings and make decisions concerning matters within the jurisdiction of the Board of Appeals based on criteria contained in the County Zoning Regulations and in compliance with Hearing Examiner Rules of Procedure and the Howard County Code. Decisions of the Hearing Examiner may be appealed to the Board of Appeals as provided by law.

### 2. **What kind of cases does the Hearing Examiner hear?**

The Hearing Examiner conducts hearings and make decisions on the following requests:

**Variances:** A variance may be granted from the bulk regulations and parking requirements established in the Zoning Regulations when certain criteria are met. (See Section 130.B.2. of the Regulations). The Hearing Examiner also hears variances to the Sign Code.

**Conditional Uses:** A conditional use is not a change in zoning but an allowable use under existing zoning when certain criteria and standards are met. (See Section 131 of the Regulations).

**Departmental Appeals:** Any person aggrieved by an administrative decision by certain Counties agency may appeal to the Hearing Examiner within 30 days of the agency decision.

**Non-conforming Uses:** A non-conforming use is a lawful, existing use that does not conform to the current regulations of the zoning district in which the property is located. The Hearing Examiner may confirm a non-conforming use and approve its extension, enlargement or alteration. (See Section 129 of the Regulations).

### 3. **What is the process for obtaining a hearing before the Hearing Examiner?**

**Submitting a Petition:** A petition is submitted to the Department of Planning and Zoning (DPZ) with the appropriate fee (see current fee schedule as adopted by resolution of the County Council). DPZ staff members evaluate the petition for technical completeness and distribute it to various County agencies for comments. DPZ prepares a Technical Staff Report for all petitions for non-conforming uses, conditional uses, and variances in commercial or industrial zoning districts. A staff report is prepared by the Sign Code Administrator for sign variance petitions. A Technical Staff Report is **not** prepared for residential variances or departmental appeals.

**Posting & Advertising:** The property must be posted for at least 30 days immediately prior to the hearing. In addition, the date, time and place of the hearing are advertised in two newspapers of

general circulation in Howard County (Howard County Sun, the Howard County Times or the Washington Post) at least 30 days before the hearing. Residential variances have a 15-day requirement for posting and advertising.

**4. What is the most effective way to oppose a petition?**

It is essential to become very familiar with the general standards (listed below) that the Hearing Examiner is required to consider in variance or conditional use cases. Before granting the request, the Hearing Examiner must find that the criteria are satisfied. The Hearing Examiner may impose conditions to ensure compliance. The criteria that must be met include:

**Variances (Section 130.B.2. of the Regulations):**

- The site has unique physical conditions which result in practical difficulties or unnecessary hardships in complying with the Regulations;
- The variance will not alter the essential character of the neighborhood;
- The practical difficulties or unnecessary hardships in complying with the bulk requirements have not been created by the owner; and
- The variance is the minimum necessary to afford relief.

**Conditional Uses (Section 131 of the Regulations):**

- The use will be in harmony with the Howard County General Plan.
- The use will not adversely affect vicinal properties (i.e., the use will not have adverse effects above and beyond those inherently associated with such a use irrespective of its location within the zone);
- The use will not hinder or discourage the development and use of adjacent land and structures; and
- Parking will be adequate, properly located and screened from adjoining residential uses and ingress and egress drives will be laid out to achieve maximum safety.

It is also essential for the petitioner to meet the specific criteria for the particular conditional use category which is the subject of the case being heard (See Section 131.N. of the Zoning Regulations).

**If possible, attend the Pre-Submission Community Meeting:**

Effective July 10, 2002 (Council Bill 19-2002), a community meeting is required prior to the initial submittal of a petition for a conditional use in accordance with Section 131.F. of the Howard County Zoning Regulations. Information concerning the community meeting will be posted on the subject property as well as on the DPZ web site.

**Attend the public hearing and testify:**

The most effective way for a protestant to oppose a petition is by testifying at the public hearing before the Hearing Examiner in opposition to the petition, presenting testimony and evidence that the petition does not meet the requisite criteria. Testimony should directly relate to the general and specific criteria upon which the Hearing Examiner will decide the case. Testimony will be given under oath, made a part of the official record of the hearing and be subject to cross-examination. The Hearing Examiner has the authority to disallow testimony that is irrelevant or redundant. Protestants are encouraged to consult with one

another before the hearing regarding their testimony and to appoint a spokesperson who will cross-examine the petitioner's witnesses on behalf of all protestants. Each protestant will have the opportunity to testify at the public hearing.

5. **Is it necessary to hire an attorney?**

It is not required to hire an attorney; however, protestants should carefully consider this option, depending on the complexity of the case.

6. **If we don't use an attorney, how may we most effectively present our position?**

Select a spokesperson before the hearing. When several individuals appear in opposition to a petition, the Hearing Examiner may request the group to elect a spokesperson who will cross-examine witnesses, call witnesses, introduce evidence on behalf of the group, object to the introduction of evidence and make opening and closing statements. An individual may testify on behalf of a civic, community or citizens' association with authorization (a duly adopted resolution of the association signed by the president and attested by the secretary) that he/she is sanctioned to represent the group. This individual must state the number of members in the association and its geographic boundaries. An individual may elect not to be represented by a spokesperson and may act on his or her own behalf.

7. **May I submit written testimony or discuss the case with the Hearing Examiner prior to the hearing?**

Under Section 7.1 of the Hearing Examiner Rules of Procedure, the Hearing Examiner may not communicate (in writing or verbally) outside of a hearing with any person who is a party regarding any matter relevant to the merits or the law of a pending or proposed petition. Any request for information concerning a pending or proposed petition should be directed to the Administrative Assistant.

Written testimony may be read at the public hearing and then submitted as part of the record. Exhibits may also be submitted, i.e., documents or photographs referred to in testimony. Exhibits may not be mounted and shall be folded to a maximum size of 9" by 14". An exact duplicate of the exhibit may be mounted and used for presentation purposes. A technical report or similar documentary evidence must be filed with DPZ at least 30 days prior to the hearing. A party submitting exhibits must provide at least one copy for the opposing party.

8. **How do I sign up to testify at the public hearing?**

Any person may testify by signing their own name to the roster at the hearing. Any person unable to attend the initial hearing must submit, no later than the day of the initial hearing, a written request to testify. If a hearing is continued, only the individuals who have timely submitted a written request, signed the roster prior to the end of the petitioner's case, or are called by the petitioner in rebuttal will be permitted to testify.

9. **What is the order of presentation at hearing before the Hearing Examiner?**

The ordinary but not mandatory order of presentation is as follows: (a) Disposition of outstanding preliminary matters; (b) Petitioner's presentation - testimony of witnesses, questioning of witnesses by opposition and the hearing examiner; (c) Opposition's presentation - testimony of witnesses, questioning of witnesses by petitioner and the hearing examiner; (d) Petitioner's rebuttal presentation.

10. **Will I be cross-examined when I testify at the hearing?**

Yes. The Hearing Examiner and the petitioner and/or its attorney may ask questions about your testimony after you have finished, but they may only ask questions directly related to your testimony.

11. **May I request a subpoena to be issued by the Hearing Examiner?**  
In accordance with Section 7.3 of the Hearing Examiner Rules of Procedure, at least 21 days before the initial hearing, a party may ask the Hearing Examiner to issue a subpoena. The request must contain the name and address of the person to be subpoenaed, a brief proffer as to the content and relevance of the person's expected testimony and a list of all documents to be brought to the hearing.
12. **Is the Hearing Examiner familiar with the property?**  
The Hearing Examiner is required to view the subject property in person before the hearing begins.
13. **When will the Hearing Examiner make a decision on the case?**  
The Hearing Examiner may make a verbal decision at the hearing, however, the decision is not final until the Decision and Order (the official legal document stating and explaining the decision) is signed by the Hearing Examiner. The Hearing Examiner will endeavor to issue a written decision within 30 days after the conclusion of the hearing.
14. **What is the appeal procedure?**  
A person aggrieved by a decision of the Hearing Examiner may appeal it to the Board of Appeals within 30 days of the issuance of the written decision. An appeal must be submitted to DPZ with the appropriate filing fee and advertising expenses to be paid by the person filing the appeal. Upon the filing of an appeal, all parties of record will be notified and the record (including the original petition, technical staff report, list of parties of record, and the Hearing Examiner's decision) will be forwarded to the Board of Appeals for a hearing date. This case will be heard by the Board of Appeals as a new case (*de novo*).
15. **What resources are available to me?**
  - C You may review the official case file at the DPZ public service desk. Copies from the file may be made at \$.25 per page.
  - C Staff at the DPZ public service desk will answer your general questions during business hours (410) 313-2350.
  - C Call or visit DPZ to request copies of handouts, i.e., the Hearing Examiner Rules of Procedure, relevant brochures, technical staff report, criteria from the Zoning Regulations. The Howard County Zoning Regulations also may be purchased at DPZ.
  - C The Hearing Examiner Schedule is available on the Internet under the Howard County Council web site ([www.co.ho.md.us/council.html](http://www.co.ho.md.us/council.html))

For more information contact:

The Howard County Department of Planning and Zoning  
(410) 313-2350, TTY 410-313-2323 or [www.howardcountymd.gov](http://www.howardcountymd.gov) or visit Planning & Zoning's Customer Service Center on the first floor of the George Howard Building, 3430 Courthouse Drive, Ellicott City, Maryland, 212043.

Office Hours are:

Monday through Friday

8:00 a.m. to 5:00 p.m.

Written inquiries may also be sent to our office at the above address.

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